IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 7989 of 2002

Between:

N.Rajaiah S/o. late Narsaiah
R/o. 3-7-494, Rangaraopally Village,
Uppar Malyol Post, Karimnagar District.

..... PETITIONER

AND

1 The Industrial Tribunal-cum-Labour Court, Rep. by its Presiding Officer, Godavarikhani, Karimnagar District.
2 The Depot Manager, A.P.S.R.T.C.,
Nirmal, Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 1st respondent and issue an appropriate Writ, Order or Direction particularly one in the nature of Writ of Certiorari and quash the Award passed by the 1st respondent in I.D.No.116 of 1997, dated 20.10.2000, published on 5.2.2001, as illegal, unjust, contrary to law and perverse; and grant the relief of reinstatement with wages and all other attendant benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.2: SMT.G.JYOTHI KIRAN

Counsel for the Respondent No.1: G.P. for Labour

The Court made the following:

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ORDER:

Heard Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner and Smt.G.Jyothi Kiran, learned Standing Counsel appearing on behalf of the second respondent-Corporation.
At their request, the main writ petition itself is taken up for disposal.

The petitioner filed this writ petition seeking writ of Certiorari assailing the award passed by the first respondent-Tribunal in I.D.No.116 of 1997 dated 20-10-2000, published on 05-02-2001, as illegal, unjust and contrary to law and to grant relief of reinstatement with wages and all other attendant benefits.

The case of the petitioner is that initially he was appointed as a Conductor in the second respondent-Corporation in the year 1980. However, while he conducting the bus on 13-08-1996,
a check was exercised by the officials of the second respondent-Corporation and a memo was issued alleging certain irregularities and disciplinary proceedings were initiated. After conducting an enquiry, petitioner was removed from service on 17-02-1997. Thereupon, he raised an industrial dispute before the Industrial Tribunal under Section 2-A (2) of the Industrial Disputes Act, 1947
(for short 'the Act') and the same was taken up by the first respondent and ultimately the same was dismissed confirming the removal orders.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner submits that having regard to the nature of the provisions under the Act, the Tribunal should first decide a preliminary issue as to the validity of the domestic enquiry and in the absence of which, the impugned award is vitiated.

Learned standing counsel appearing on behalf of the second respondent-Corporation contends that in view of the charges levelled and proved against the petitioner, the impugned order is sustainable and it does not call for any interference.

Having heard the submissions made on either side and on perusal of the material available on record, the question, which requires to be considered, is as to whether in the absence of any finding on the preliminary issue with regard to the validity of the domestic enquiry, the award passed by the first respondent is vitiated?

The aforesaid question is no longer *res integra* as the Supreme Court in **COOPER**

ENGINEERING LTD. V. P.P.MUNDHE held that such procedure is mandatory and it is only after such finding, it will be for the management either to lead evidence or not.

On a reading of the award passed by the Tribunal, it is seen that there is no finding with regard to the validity of the domestic enquiry. In view of the same, the matter requires reconsideration. It is to be held that the impugned order is wholly unsustainable.

The writ petition is accordingly allowed setting aside the impugned award dated 20-10-2000 and the matter is remitted to the first respondent for fresh consideration and disposal, in accordance with law, after giving notice and opportunity to both sides within a period of three months from the date of receipt of a copy of this order. No costs.

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(B.PRAKASH RAO, J)

Dated February 25, 2005.

YCR

To

1 The Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District.
2 The Depot Manager, A.P.S.R.T.C., Nirmal, Adilabad District.

3. 2 C.D. copies.

4. 2 C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad.